

## § 1705.11

(1) Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of OFHEO in the adversary adjudication that the applicant alleges was not substantially justified;

(2) State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);

(3) State that the net worth of the applicant does not exceed \$2 million, if the applicant is an individual; or for all other applicants, state that the net worth of the applicant and its affiliates, if any, does not exceed \$7 million; and

(4) Include one of the following:

(i) A detailed exhibit showing the net worth (net worth exhibit) of the applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to determine whether the applicant qualifies as an eligible party;

(ii) A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

(iii) A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

### § 1705.11 Request for confidentiality of net worth exhibit.

(a) The net worth exhibit described in § 1705.10(c)(4)(i) shall be included in the public record of the proceeding for the award of fees and other expenses, except if confidential treatment is re-

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quested and granted as provided in paragraph (b) of this section.

(b)(1) The applicant may request confidential treatment of the information in the net worth exhibit by filing a motion directly with the adjudicative officer in a sealed envelope labeled “Confidential Financial Information.” If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information by another party or the public shall be resolved in accordance with the Freedom of Information Act, 5 U.S.C. 552b, and the Releasing Information regulation at 12 CFR part 1710.

(2) The motion shall:

(i) Include a copy of the portion of the net worth exhibit sought to be withheld;

(ii) Describe the information sought to be withheld; and

(iii) Explain why the information is exempt from disclosure under the Freedom of Information Act and why public disclosure of the information would adversely affect the applicant and is not in the public’s interest.

(iv) Be served on agency counsel but need not be served on any other party to the proceeding.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

### § 1705.12 Documentation of fees and expenses.

(a) The application for award shall be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement shall be submitted for each entity or individual whose services are covered by the application. Each itemized statement shall include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or

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payable by the applicant or by any other person or entity.

### §§ 1705.13–1705.19 [Reserved]

## Subpart C—Procedures for Filing and Consideration of the Application for Award

### § 1705.20 Filing and service of the application for award and related papers.

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award shall be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers shall be computed in the same manner as in the underlying adversary adjudication.

### § 1705.21 Answer to the application for award.

(a) Agency counsel shall file an answer within 30 days after service of an application for award of fees and other expenses except as provided in paragraphs (b) and (c) of this section. In the answer, agency counsel shall explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1705.25.

(b) If agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing an answer. If agency counsel does not answer or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

### § 1705.22 Reply to the answer.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1705.25.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

### § 1705.23 Comments by other parties.

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

### § 1705.24 Settlement.

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application shall be filed with the proposed settlement.